Supreme Court, U. S.
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DEC 27 1979
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

NO. 79-1007

RAYMOND HUGHES

Appellant

v.

MADGE J. HUGHES

Appellee/Respondent

JURISDICTIONAL STATEMENT PURSUANT TO RULE 15.

ON APPEAL FROM THE SUPREME COURT OF
THE STATE OF ALABAMA

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IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 1979

NO.

RAYMOND J. HUGHES,

Appellant,

v.

MADGE HUGHES,

Appellee.

APPEAL FROM THE SUPREME COURT OF ALABAMA

JURISDICTIONAL STATEMENT

This appeal is taken from the final order of the Supreme Court of Alabama entered on September 28, 1979, denying Appellant's Petition for Writ of Certiorari to the Court of Civil Appeals of Alabama. Appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial

federal questions are presented.

OPINIONS BELOW

The Supreme Court of Alabama did not issue an opinion. Its order denying Appellant's Petition for Writ of Certiorari to the Court of Civil Appeals of Alabama is reported as Ex Parte Raymond J. Hughes, 372 So. 2d 846 (Ala. 1979). The opinion of the Court of Civil Appeals of Alabama is reported as Hughes v. Hughes, 372 So. 2d 845 (Ala. Civ. App. 1979). Copies of the order and the opinion are attached as Appendices A and B, respectively.

Opinions and orders by this Court, the Alabama Supreme Court and the Court of Civil Appeals of Alabama, rendered at prior stages of this present proceeding, are reported, respectively, in ____ U.S. ____, 99 S. Ct. 1986, ____ L.Ed.2d ____ (1979); 351 So.2d 906 (Ala. 1977); and 362 So. 2d 910 (Ala. Civ. App. 1977). The opinion of this Court, on prior appeal, is attached hereto as Appendix F.

JURISDICTION

On this appeal the Appellant seeks to enjoin the enforcement of certain Alabama statutes declared by the Alabama Courts to be constitutionally valid but previously declared by this Court to be unconstitutional, to compel the courts below to comply with the previous mandate of this Court in this cause, and to preserve Appellant's rights to due process and equal protection under the Fourteenth Amendment.

On a prior appeal of this same case, this Court vacated the Alabama Court's judgment on the basis that Alabama's alimony statutes were unconstitutional. On remand, the Court of Civil Appeals of Alabama, in an order entered on June 27, 1979, declared the same statutes to be constitutional. A rehearing in the Court of Civil Appeals was denied on August 8, 1979. Appellant appeals to this Court from an order of the Supreme Court of Alabama entered on September 28, 1979, which denied Appellant's Petition for a Writ of Certiorari to the Court of Civil Appeals, and thereby made the judgment of the Court of Civil Appeals final. The filing of an application for rehearing in the Supreme Court of Alabama after denial of such a petition is not permitted. Rule 39(j), Alabama Rules of Appellate Procedure.

On December 27, 1979, counsel for Appellant filed a "Notice of Appeal to the Supreme Court of the United States" in the Supreme Court of Alabama and in the Court of Civil Appeals of Alabama (Appendix D), mailed the same to Counsel for Appellee, and delivered the same to this Court along with his "Appearance and Notification Form."

This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(2) and Section 2101(c). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment by direct appeal in this case: Orr v. Orr, 440 U.S. ____, 99 S. Ct. 1102, 59 L.Ed.2d 306 (1979); Lathrop v. Donohue, 367 U.S. 820, 81 S. Ct. 1826, 6 L.Ed.2d 1191 (1961); Marcus v. Search Warrant, 367 U.S. 717 81 S. Ct. 1708, 6 L.Ed. 2d 1127 (1961); In re Sanford Fork & Tool Company, 160 U.S. 247, 16 S. Ct. 291, 40 L.Ed 414 (1895); Tyler v. Magwire, 84 U.S. (17 Wall) 253, L.Ed. 576 (1873); Martin v. Hunter's Lessee 14 U.S. (1 Wheat) 304, 4 L.Ed. 97 (1816).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following Constitutional and statutory provisions are set forth in Appendix C hereto:

The United States Constitution, Article III, Section 2, Article VI; and Amendment XIV;

The United States Code, Title 28, Sections 1257, 2104, and 2106;

The Code of Alabama, 1975, Sections 30-2-51, 30-2-52, and 30-2-53; and

Orr v. Orr, 374 So.2d 895 (Ala. Civ. App. 1979).

QUESTION PRESENTED

The ultimate question presented is whether Alabama's alimony statutes are unconstitutional either as written or as applied to Appellant. Specifically: Did the Alabama courts, on remand from this Court in Hughes v. Hughes, _____ U.S. _____, 99 S. Ct. 1986 (1979), fail to follow this Court's mandate either by judicially extending the Alabama alimony statutes which this Court had held unconstitutional or by applying the statutes, as extended, to this Appellant in such a way as to violate his rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution?

STATEMENT OF THE CASE INCLUDING THE RULING ON THE FEDERAL QUESTION

This cause is a related case to Orr v. Orr, No. _____, now on appeal to this Court from the Supreme Court of Alabama. Both Orr and this case have previously been before this Court, Orr v. Orr, 440 U.S. _____, 99 S. Ct. 1102, 59 L.Ed. 2d 306 (1979), and Hughes v. Hughes, _____ U.S. _____, 99 S. Ct. 1986.

This proceeding began in the Circuit Court of Coffee County, Alabama as a divorce action against Appellant by his wife. On April 27, 1977, the Circuit Court entered a final decree awarding a divorce and requiring the payment of various benefits from the husband to the wife, including $100,000 as alimony in gross. Upon the award of such alimony over appellant's objection, appellant challenged such award on grounds raising the constitutionality of Alabama's alimony statute, and seeking a determination that the alimony statutes be declared to be in violation of the Equal Protection Clause of the Federal Constitution, and that the award of alimony by the Circuit Court be declared null and void. The Circuit Court denied appellant's motion on April 27, 1977.

Appellant appealed the Circuit Court's order and decree to the Alabama Court of Civil Appeals expressly raising the issue of the Constitutionality of Alabama's alimony statutes, which issue was noted by the Court of Civil Appeals, Hughes v. Hughes, 362 So. 2d 910, 912 (Ala. Civ. App. 1977).

The Court of Appeals, in Hughes v. Hughes, 362 So. 2d 910 (Ala. Civ. App. 1977), denied relief on the Constitutional issues, on the authority of its own prior decision in Orr v. Orr, 351 So. 2d 904 (Ala. Civ. App., 1977), and affirmed the trial court's award.

Appellant's petition to the Supreme Court of Alabama for Writ of Certiorari to the Court of Civil Appeals was originally granted, but then the writ was quashed as improvidently granted by order dated September 22, 1978, 362 So. 2d 918 (Ala. 1978).

An appeal was then taken to this Court, No. 78-1071, and on April 16, 1979, on the authority of Orr v. Orr, 440 U.S. _____, 99 S.Ct. 1102, 59 L.Ed.2d 306, the cause was reversed and remanded for further consideration in light of the decision in Orr, Hughes v. Hughes, _____ U.S. _____, 99 S. Ct. 1986. In Orr, this Court had declared Alabama's alimony statutes to be unconstitutional on the grounds of violating the Equal Protection clause of the United States Constitution.

On remand, the Alabama Court of Civil Appeals again affirmed the trial court, this time on authority of its remand decision in Orr v. Orr, 374 So.2d 895 (Ala. Civ. App. 1979), where the Court of Appeals had judicially expanded the scope of Alabama's alimony statute to apply neutrally to both sexes. On that extension, the Alabama Court of Civil Appeals now declared the alimony statute under which the trial court's award had been made to be constitutional despite this Court's express finding to the contrary in Orr, Ex Parte Hughes, 372 So. 2d 845 (Ala. Civ. App., 1979).

The Alabama Court of Civil Appeals denied appellant's application for rehearing, and on September 28, 1979, the Supreme Court of Alabama denied his application for writ of certiorari, 372 So. 2d 846 (Ala., 1979). No application for rehearing is permitted from such denial, Rule 39(j) Alabama Rules of Appellate Procedure.

THE FEDERAL CONSTITUTIONAL QUESTION PRESENTED IS SUBSTANTIAL

On the prior appeal of this case, this Court entered an order holding: "The judgment is vacated and the case is remanded to the Supreme Court of Alabama for further consideration in light of Orr v. Orr, 440 U.S. _____ (1979). Mr. Justice Powell took no part in the consideration or decision of this case."

In Orr v. Orr, 440 U.S. _____, 99 S. Ct. 1102, 59 L.Ed.2d 306 (1979), this Court had determined that Alabama's alimony statutes were constitutional, and had remanded the Orr case for further proceedings not inconsistent with that finding and opinion. THis case then followed, to be decided by the Alabama courts in light of the Orr opinion.

On remand, the Alabama Court of Civil Appeals in Orr undertook to judicially restructure the Alabama alimony statutes to extend them neutrally to "needy husbands as well as wives," 374 So.2d at 897. That Court thus reconsidered the same statute declared by this Court to be unconstitutional and now declared it to be constitutional — an issue not open to it under this Court's decision.

When the Alabama Court of Civil Appeals reconsidered Hughes, it held:

> The above styled cause was remanded to this court by the Alabama Supreme Court in response to the mandate of the United States Supreme Court for reconsideration in light of Orr v. Orr, 440 U.S. _____, 99 S. Ct. 1102, 59 L.Ed.2d 306 (1979).
>
> In the Orr case the United States Supreme Court held the Alabama alimony statutes unconstitutional for the

reason that they denied the husband equal protection of the law. Subsequently this court rendered a decision, i. e. Orr v. Orr, ____ So. 2d ____, Civ. 1006 (Ala. Civ. App., May 30, 1979), extending the benefits of the alimony statutes equally to men as to women, thereby removing the equal protection infirmity. Thus the Alabama alimony statutes are now constitutional insofar as they do not violate the Equal Protection Clause of the fourteenth amendment to the United States Constitution.

(The issue here is the same as that now presented to this Court in the current appeal in William Herbert Orr v. Lillian M. Orr, No. ____ (Oct. Term, 1979).

The Alabama Court of Civil Appeals, and by its denial of a writ of certiorari, the Alabama Supreme Court, have thus left appellant Hughes with obligation to pay alimony under a state statute declared by this Court to be unconstitutional. As noted in the appellant's brief in Orr v. Orr, this Court has consistently held that a lower court with jurisdiction over a case on remand under a Supreme Court mandate is foreclosed from reconsidering matters decided by the Supreme Court. E.g., United States v. Haley, 371 U.S. 18, 83 S. Ct. 11, 9 L.Ed.2d 1 (1962); Sibbald v. United States, 37 U. S. (12 Pet.) 488, 9 L.Ed. 1167 (1838). When a case has once been decided by this Court on appeal and remanded, what was before this Court and disposed of by its decree is considered as finally settled, and the court to which it is remanded is bound by the decree as the law of the case. In re Sanford Fork & Tool Co., 160 U.S. 247, 16 S. Ct. 291, 40 L.Ed. 414 (1895); Tyler v. Magwire, 84 U.S.(17 Wall) 253, 21 L.Ed. 576 (1873). This Court has long held that a "final judgment of this court is supposed to be

conclusive upon the rights which it decides . . . ," and that a final judgment of this Court is conclusive upon the parties and cannot be re-examined. Martin v. Hunter's Lessee, 14 U.S. (1 Wheat) 304, 4 L. Ed. 97 (1816). The judgment of this Court was that Alabama's alimony statutes are unconstitutional and that judgment cannot and should not be re-examined. The status and effect of legislation declared by this Court to be unconstitutional will remain unsettled if the unconstitutional statutes are not, at least prospectively, treated as invalid and void. Of course, an unconstitutional act is generally considered to be no law at all and to be treated as inoperative as if it had never been passed. Chicago, Indianapolis & Louisville Ry. Co. v. Hackett, 228 U.S. 559, 33 S. Ct. 581, 57 L. Ed. 966 (1913). Otherwise, an unconstitutional statute will continue to exist and may later be declared to be valid and enforceable by some lower court which, applying its own interpretation, determines that the unconstitutional effect has been erased. That is what has occurred here. Whether this result, which amounts to a means by which a lower court may reverse and overrule this Court's decision, is permissible, is a substantial federal question presented on this appeal.

The issue before the Alabama Court was not whether some other statute, if and when passed by the legislature, as was in fact done in Alabama, would be constitutionally permissible, nor what the result of a new hearing in the Alabama trial court would be in light of the Orr decision. Orr potentially had an impact on many aspects of Alabama's property, alimony and support laws and prior judicial decisions on marital property settlements, all of which were brushed aside by the Alabama Court of Civil Appeals' decision effectively refusing to follow the mandate of this Court declaring the Alabama alimonystatutory scheme unconstitutional. While the State of Alabama could and eventually did pass new laws which purport to be gender-neutral, the award

against appellant Hughes made prior to the changes remains one made under an unconstitutional statute. Raymond Hughes was not afforded any hearing wherein his rights, duties and obligations could be determined under a valid statute. The statute under which the alimony was awarded violated the Equal Protection clause of the Fourteenth Amendment, and was so determined; then the deprivation of any hearing under either the "extended" statute created by the Court of Civil Appeals or under the new act of the legislature compounded the wrong by violating clear due process rights to notice and an opportunity to be heard, Fuenter v. Shevin, 407 U.S. 67, 92 S. Ct. 1983, 32 L.Ed.2d 556, reh. den. 409 U.S. 902, 93 S. Ct. 117, 34 L.Ed.2d 165 (1972).

The due process clause encompasses the judicial counterpart of the ban on ex post facto laws found in the Constitution. Rabe v. Washington, 405 U.S. 313, 92 S. Ct. 933, 31 L. Ed 2d 258 (1972), reh. den., 406 U.S. 911, 92 S. Ct. 1604, 31 L. Ed. 2d 822 (1972); Bouie v. City of Columbia, 378 U.S. 347, 84 S. Ct. 1697, 12 L. ED. 2d 894 (1964). In those cases, this Court held that criminal statutes cannot by applied against persons whose acts are held to be violative thereof because of unforeseeable judicial constructions subsequent to the commission of those acts. These cases are applicable to the case at bar. The Court of Civil Appeals of Alabama has now effectively stated that Appellant already was given equal rights under the Alabama alimony statute at the time of the state trial court hearing, although it is obvious that neither Appellant nor anyone else knew, or could have known, that such rights existed at that time. A court cannot, by retroactive application of any extended interpretation of a statute, impute knowledge of that interpretation upon petitioner to his detriment, Marks v. United States, 430 U.S. 188, 97 S. Ct. 990, 51 L. Ed. 2d 260 (1977). This should be particularly true where, as here, the statute was so clearly worded and had been so consistently applied by the highest courts of the

State in a manner which contradicts the later interpretation.

Thus a federal question of tremendous impact is squarely presented by the current appeal in Orr v. Orr and by this appeal. If this Court's careful — and obviously difficult — decisions can be plainly and openly disregarded by the state courts on remand of the same case for proceedings "not inconsistent" with it, then the whole of the judicial process is undermined, and the basic power of this Court under the Federal Constitution is challenged and endangered. Indeed, this Court should hear this appeal almost as a petition for mandamus to enforce its own prior order. There simply can be no power in a state court to reconsider a statute found by this Court to be unconstitutional and to declare instead that it -- the state court — finds the same statute to be constitutional.

The power of this Court to interpret the Federal Constitution must carry with it both the power and the duty to enforce those decisions it renders in the exercise of that power. No decision of the Alabama courts inconsistent with the decision of this Court in this cause should be allowed to stand.

This Court has jurisdiction of this appeal because there has been a final determination by the Alabama courts of the constitutionality by the statutes in question, whether those statutes are considered to be legislative enactments which the Alabama courts have interpreted or state court orders of a legislative nature. Orr v. Orr, 440 U.S. _____, 99 S. Ct. 1102, 57 L.Ed.2d 306 (1979); Lathrop v. Donohue, 367 U.S. 820, 81 S. Ct. 1826, 6 L. Ed. 2d 1191 (1961). If it be suggested that the Alabama court responded to the invalidation of the alimony statutes by creating new alimony rights totally independent of any law passed by the State legislature, then the fact that the Alabama court was acting for the purpose

of providing Alabama with an alimony statute would suggest that its order possesses sufficient legislative characteristics to support an appeal. Lathrop v. Donohue, supra; Marcus v. Search Warrant, 367 U.S. 717, 81 S. Ct. 1708, 6 L. Ed. 2d 1127 (1961). In fact, the order may not only encroach on the functions of the Alabama legislature, but may well be so arbitrary as to constitute a violation of due process of law.

Appellant contends that the Alabama courts have failed to follow this Court's mandate, and a review of the judgment by appeal is appropriate since the action of the lower court takes the form of an appealable order.

CONCLUSION

This case, and the Orr case which precedes it, present important and substantial questions of federal supremacy, the powers of this Court, and public policy. It should be joined with the current appeal in Orr v. Orr for plenary consideration.

Respectfully submitted,

Richard H. Gill
Attorney for Appellant

CERTIFICATE OF SERVICE

I, a member of the Bar of the Supreme Court of the United States, hereby certify that I have served a copy of Jurisdictional Statement Pursuant to Rule 15 as submitted to the Supreme Court of the United States in the above styled cause, upon Mr. Joe S. Pittman, 304 S. Edwards Street, Enterprise, Alabama 36330, attorney for Appellee, by mailing same, postage prepaid, on this the 27th day of December, 1979.

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APPENDIX A

RAYMOND HUGHES

v.

MADGE J. HUGHES

COURT OF CIVIL APPEALS
OF ALABAMA

Jan. 11, 1978.

Rehearing Denied
Feb. 15, 1978 and
March 22, 1978

Civ. 1204

Ala.Civ.App. 362 So.2d
910

In divorce proceedings instituted by the wife, the Circuit Court, Coffee County, Riley Green, J., granted the divorce, ordered the husband to pay alimony, child support, attorney fees to wife's attorney, and made further orders concerning the parties' home and imposed other obligations on the husband, who appealed. The Court of Civil Appeals, Bradley, J., held, inter alia, that the trial court did not abuse its discretion in requiring that the husband pay child support until further order of the trial court.

Affirmed and attorney fee awarded.

Writ quashed, Ala., 362 So.2d 918.

1. DIVORCE KN 310

In view of fact that there is no legal obligation of parent to support, maintain or educate child once that child reaches age of 19, divorce court did not err in changing its original language ordering husband to pay child support from "while said child successfully continues his education in college" to "until further orders of the court;" in any case, no abuse of discretion was shown.

2. DIVORCE KN 240(2), 308

Divorce court's order requiring husband

to pay alimony, child support and expenses of marital home totaling $1,478.83 per month was not improper despite husband's contention that such monthly payments exceeded his monthly income.

3. DIVORCE KN 240(2)

In reaching its decision on size of alimony award, divorce court may consider such factors as parties' future prospects, parties' standard of living during their marriage and their potential for maintaining or exceeding that standard after their divorce, their ages, sex and health, length of their marriage, source or soucres of their common property, and conduct of parties with reference to cause of divorce.

4. DIVORCE KN 184(4)

Court of Civil Appeals will review divorce judgment with presumption of correctness in any situation where divorce court has heard testimony and viewed witnesses.

5. DIVORCE KN 286(4)

Award of attorney fees to wife in divorce case is matter within sound discretion of trial court, and that court will not be reversed on appeal for exercise of its discretion unless award is plainly erroneous or manifestly wrong; no such plain error was shown in divorce court's order requiring payment of wife's attorney fees.

6. DIVORCE KN 227(2)

Award of $4,500 attorney fee to wife in divorce action was not excessive or unjust where two lawyers testified at trial that reasonable value of services rendered on wife's behalf

by her attorney was between $5,000 and $6,000.

7. APPEAL AND ERROR KN 179(4)

Court of Civil Appeals will not consider issue as to constitutionality of statute where such issue is raised for first time in motion for new trial.

8. DIVORCE KN 282

Court of Civil Appeals would not consider contention that alimony statute was unconstitutional where such contention was made for first time in husband's motion for new trial. Code of Ala. 1975, § 30-2-51.

9. DIVORCE KN 70

Where wife's petition for divorce requested that trial court award her share in her husband's automobile dealership and where dealership agreement with manufacturer prohibited transfer of ownership in stock of dealership without knowledge and consent of manufacturer, divorce court did not err in permitting manufacturer to be joined as party to divorce proceedings. Rules of Civil Procedure, rule 19.

10. DIVORCE KN 179

Husband's failure to object to joinder of party before closing divorce proceedings constituted waiver of his right to object to trial court's action on such matter. Rules of Civil Procedure, rule 19; Rules of Appellate Procedure, rule 4.

11. DIVORCE KN 184(2)

Where husband in divorce proceedings

objected to joinder of third party, but such third party did not appeal any ruling of trial court, husband lacked standing to exercise third party's right to appeal on its behalf.

12. DIVORCE KN 227(1)

On husband's appeal from divorce action, $500 would be just and reasonable fee to be awarded wife for legal services furnished by her attorney on such appeal.

On Rehearing

13. APPEAL AND ERROR KN 1183

Judgment on appeal is not entered until Court of Civil Appeals has ruled on application for rehearing or time for filing such application has expired.

14. DIVORCE KN 194

Statute providing for award of ten percent damages on stayed appeals which are affirmed applied to judgment entered in divorce case. Code of Ala.1975, §12-22-72; Rules of Appellate Procedure, rule 8(a).

J. Gary Pate of Hobbs, Copeland, Franco & Screws, Montgomery, for appellant.

Joe S. Pittman of Pittman, Whittaker & Hooks, Enterprise, for appellee.

BRADLEY, Judge.

This appeal follows a decree entered by the Circuit Court of Coffee County divorcing

the parties on the basis of incompatibility of temperament. Appellant-husband contends that the trial court committed reversible error when it ordered him: (1) to continue to pay child support "until further order of the [trial] court;" (2) to pay an excessive amount of alimony; and (3) to pay his wife's attorney's fees. In addition, the husband argues that Title 30, chapter 2, section 51, Code of Alabama 1975 is unconstitutional in that it permits an award of alimony solely to a wife. And finally, the husband claims that General Motors Corporation was improperly joined as a party to the divorce proceeding below.

The record before this court reveals that the parties had been married approximately twenty-three years when they were divorced. Their union produced three children, two of whom were adults at the time the marriage was dissolved. The couple's eldest daughter is a college graduate and no longer resides at the family home. The middle child, a daughter, attends school at Auburn University but is still dependent upon her mother and father for at least a portion of her financial support. The parties also have a son who is their youngest child. He was a high school sophomore at the time of the divorce.

Both the husband and wife are in their mid-fifties. Although the husband is in good health, the wife has had problems with her back and has undergone two operations to correct this condition. Other than recurring difficulties with her back, she is in reasonably good health.

The husband is owner and operator of Ray Hughes Chevrolet, Inc., an automobile dealership located in Enterprise, Alabama. On the other hand, the wife is a homemaker and

has not been employed in a position outside the home since the early years of the couple's marriage.

Evidence presented at trial disclosed that during the latter years of the parties' marital union, the husband engaged in a marked tendency to disassociate himself from his family--often refusing to eat or converse with his wife or children. Testimony further revealed that the husband and wife frequently argued over finances and his refusal to inform her about the family's financial condition. Finally, the trial transcript indicates that when the husband did engage in conversations with the members of his family it was generally for the purpose of harangueing or criticizing them. It was on the basis of the aforementioned circumstances that the wife ultimately decided to obtain a divorce.

In December of 1974 the wife filed a complaint seeking a divorce from her husband. After the occurrence of various procedural stages dealing with this matter, a hearing was held in the Circuit Court of Coffee County and on October 6, 1976 a decree of divorce was ordered. This judgment was based on the finding by the court that there existed such a complete incompatibility of temperament that the parties could no longer live together. In its decree of October 6, the court ordered that the wife be granted custody of the couple's minor son; that the husband pay $300 a month child support until his son graduated from college; that he pay his son's medical expenses; and that the husband pay the wife alimony in gross in the amount of $10,000 per year (or $833.33 a month) for ten years. Moreover, the wife and son were granted the use of the family residence until further order of the court and the husband was required to pay the mortgage, taxes and

insurance on this residence. A general lien was declared on all of the husband's property, including his Chevrolet dealership, and he was precluded from disposing of any stock in the dealership which belonged to him (unless the proceeds therefrom were used to pay alimony or child support) until he had paid the $100,000 in alimony payments due his wife. The husband was also ordered to pay the attorney's fees incurred by the wife.

On April 27, 1977 the trial court overruled the husband's motion for new trial, withdrew its original judgment of October 6, 1976, and entered a second judgment. Despite retaining a substantial portion of the language in its original decree, the court made the following modifications: (1) $300 a month to be paid by the husband as child support for his minor son "until further order of the court;" (2) the family residence to be sold when the minor child reached the age of majority--with one-third of the proceeds from the sale to the wife and the remaining two-thirds of the proceeds to the husband. The husband was also ordered to maintain complete medical insurance on his wife and the award of attorney's fees to the wife's counsel was raised from $3,500 to $4,500. From the trial court's second judgment the husband brings this appeal.

The first issue presented to this court for review concerns the husband's assertion that the trial court abused its discretion in requiring that he pay child support until further order of the trial court. He contends that his motion for new trial challenged the court's original decree ordering him to pay child support until his son graduated from college on the basis that such an order would mandate that child support payments continue even after the child reached the age of

majority. Consequently, the husband submits that the court's subsequent modification of the language in its original judgment is merely an effort to circumvent the court's obligation to declare that the husband is not required to pay child support once his son reaches the age of nineteen.

[1] Since there is no legal obligation of a parent to support, maintain or educate a child once that child reaches the age of nineteen, the court in the instant case did not err in changing its original language ordering the husband to pay child support from "while said child successfully continues his education in college" to "until further orders of the court." Indeed, the latter language is merely an indication that the court has retained jurisdiction to modify the requirement that the husband pay child support. And any such modification may in fact occur before the child reaches the age of nineteen. At any rate, the court may properly retain such jurisdiction at its discretion and it will not be reversed on appeal for doing so unless the complaining party demonstrates a clear, manifest and obvious abuse of its discretion by the trial court. We find no such abuse in the judgment below as it relates to the trial court's order regarding child support.

However, it shouldbe noted that in the cases of Hardiman v. Hardiman, 48 Ala.App. 427, 265 So.2d 607 (1972) and Huckaba v. Huckaba, Ala.Civ.App., 336 So.2d 1363 (1976), this court said that a trial court has no power to order a husband to continue to pay child support once his child reaches adulthood.

[2] The next issue raised by the husband concerns the amount of alimony awarded to the wife by the trial court. While the husband

does not contest his obligation to pay his wife an equitable amount of alimony, it is his contention that the trial court abused its discretion in ordering him to pay the sum of $833.33 a month in alimony and an additional $645.50 per month in child support, mortgage payments, property taxes and insurance on the family residence. The husband urges that these payments alone (totaling $1,478.83 per month) exceed his monthly income, and that when coupled with his obligation to provide medical care and insurance for his wife and son, the monthly amount he is required to pay for their support will force him to borrow money to meet his own living expenses. 1

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1. The husband also argues that by ordering that the total award of alimony in gross be made within ten years, the trial court deprived him of the potential benefit of claiming a tax deduction for alimony payments.

This argument is premised on § 71 of the Internal Revenue Code which provides that alimony payments are taxable to the husband unless they are payable over a period of more than ten years, or are subject to the contingencies that the husband survive the wife or that the wife not remarry.

The husband estimates that the minimal tax rate on his alimony payments will be thirty percent--that is, $3,000 a year ($250 per month).

In determining whether the trial court abused its discretion in awarding alimony we must examine the evidence presented to that court. The evidence which was introduced to this matter in the trial below reveals the following facts. The parties' home was built for $55,000 and has a current market value of $75,000. The wife testified that she wished to remain in the house until the couple's son graduated from high school. Accordingly, the trial court ordered that the house be sold when the latter reaches the age of nineteen, at which time the husband will receive two-thirds of the proceeds from the sale and the wife will be paid the remaining one-third of the proceeds.

The joint income tax returns for the husband and wife indicate that between 1969 and 1972 their taxable income was between $40,000 to $52,000 a year. This entire amount was earned as a result of the husband's automobile business--either in the form of salary or stock dividends. In 1973 the husband began to file individual income tax returns and his return for that year shows a taxable income of $43,500. In 1974 his taxable income amounted to $43,250. However, due in part to the ravages of a nationwide recession which had a particularly bad effect on the nation's automobile industry, the husband's taxable income fell to $24,400 in 1975. 2 Despite this fact, the net worth

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2. There was conflicting testimony as to the effect of the recession on automobile sales in the Enterprise area during the year of 1975. A local automobile dealer testified that in the six years he had done business in Enterprise, 1975 was the second best year in terms of sales that his Oldsmobile-Buick dealership had experienced.

of his automobile dealership rose to an all-time high and in 1975 it had an estimated value of $378,453. This increase in the value of his business was apparently the result of the husband's use of the profits from his business to acquire from General Motors whatever stock the latter owned in the husband's Chevrolet dealership. The dealership's profits were also used by the husband to purchase stock in General Motors.

The husband is the sole owner of his automobile dealership and in his capacity as the president of his wholly-owned corporation he may fix his personal salary at whatever amount he desires.

At trial he testified that he reduced his monthly salary in 1976 because of the general decline in automobile sales which occurred in 1975. Nonetheless, undisputed testimony at trial established that the husband received a monthly take-home pay of approximately $1,266 in 1976. In addition, he received annual dividends from his stock in General Motors and the yearly amount produced as a result of this stock was between $1,000 and $2,450. Thus, at the time of the divorce the husband was earning approximately $16,000 to $18,000 a year. He testified that his living expenses were approximately $600 per month.

And in view of these facts, the husband argues that the trial court ordered him to pay alimony, child support and other expenses for the benefit of his wife and son which amounted to approximately $17,750 a year and that the trial court abused its discretion by awarding such an amount.

While we would not disagree with an assertion that the trial court's award was

rather generous in view of the husband's earnings at the time of the divorce, we do not believe that the award was so excessive that it constitutes an abuse of the court's discretion.

Both the husband's General Motors stock and his automobile dealership are income producing. And the latter has demonstrated its ability in the past to provide the husband (and his family) with a confortable standard of living. Nor is there any reason to believe that the future of the husband's automobile dealership is so bleak that it will not continue to provide him with sufficient income to meet his alimony and child support obligations while at the same time furnishing him with an adequate amount of money to live on. Indeed, the husband testified during the trial that his business was improving, and given the general upswing in the nation's economy it would be remarkable for this court to conclude that the business of his automobile dealership will not continue to increase. In brief, there is nothing in the record to indicate that his income will remain at its 1975-1976 level.

Moreover, the General Motors stock retained by the husband is marketable and according to the court's decree it may be borrowed against or sold for the purpose of meeting alimony and child support payments. This stock is currently valued at $25,500 and its value will probably increase in the future.

In addition, the husband's obligation to pay his wife child support will end on his son's nineteenth birthday in March of 1978. The termination of this responsibility will reduce the husband's payments to his wife by some $3,600 a year. Likewise, upon his son's nineteenth birthday the parties'

home may be sold and the husband is entitled to two-thirds of the proceeds from the sale of this property which is currently valued at $75,000. And as the enumeration of these facts demonstrates, the husband has a number of assets and means of meeting his duties under the judgment for divorce which was rendered by the trial court.

On the other hand, the wife has neither the assets nor a separate estate to support her son and herself. She testified that the two of them have living expenses of between $600 to $1,000 per month. In addition, the wife stated that she would like to contribute some financial support to her middle daughter's college education.

The wife has performed the functions of homemaker since the early years of the couple's marriage, making every effort to be frugal and economical in meeting various household expenses; and although she has held secretarial type jobs in the past, she has not worked in such a capacity in a number of years. Moreover, her health and difficulties with her back may prevent her from obtaining any substantial employment in the future. Thus, it is apparent that the husband is the only one of the two parties who is in any financial position to provide the support necessary for the subsistence of his wife and minor son.

[3] The trial court in granting a divorce has the authority to award to the wife alimony in gross. And in determining the amount of the award the trial court may exercise its discretion. Davis v. Davis, 274 Ala. 277, 147 So.2d 828 (1962). In reaching its decision on the size of the award the court may consider the circumstances of the particular case along with a number of other relevant factors. Among these factors are: the parties' future prospects; the parties' standard of living

during their marriage and their potential for maintaining or exceeding that standard after their divorce; their ages, sex and health; the length of their marriage; the source (or sources) of their common property; and in appropriate situations, the conduct of the parties with reference to the cause of divorce. Sides v. Sides, 284 Ala. 39, 221 So.2d 677 (1969); Brooke v. Brooke, 57 Ala.App. 704, 331 So.2d 715 (1976).

[4] Furthermore, it is a well established principle that this court will review a judgment by a trial court in divorce cases with a presumption of correctness in any situation where that court has heard the testimony and viewed the witnesses. Meyers v. Meyers, 55 Ala.App. 697, 318 So.2d 725 (1975). The rationale for this rule--commonly called the ore tenus rule--is this court's awareness of the fact that the trial court is in a better position to make decisions regarding awards of alimony and child support than an appellate court. Accordingly, we will not reverse a trial court's determination in such matters unless the complaining party demonstrates from the record before this court that the trial court palpably abused its discretion. And, in this instance, we are not prepared to hold that the judgment rendered by the trial court was palpably in error. Novak v. Novak, Ala.Civ.App., 339 So.2d 77 (1976).

The third issue presented for examination by this court involves the husband's argument that (1) the trial court abused its discretion by requiring the husband to pay the attorney's fees of his wife, and that (2) the amount of attorney's fees actually awarded was excessive. However, we cannot agree with either of these contentions.

[5] An award of attorney's fees to the wife in a divorce case is a matter within the sound discretion of the trial court and that court will not be reversed on appeal for the exercise of its discretion unless the award is plainly erroneous or manifestly wrong. Therefore, we conclude that the trial court's finding that the wife was entitled to have her attorney's fees paid by her husband was not plainly erroneous or manifestly wrong.

[6] Nor was it demonstrated by the husband on appeal that the $4,500 fee which was awarded in this case was excessive. Indeed, two lawyers testified at trial that the reasonable value of the services rendered on behalf of the wife by her attorney was between $5,000 and $6,000. Consequently, we are unable to say that the trial court's award of a $4,500 attorney's fee to the wife's lawyer was clearly excessive or unjust. Phillips v. Phillips, 277 Ala. 2, 166 So.2d 726 (1964).

As an additional issue for consideration on this appeal, the husband urges this court to hold Title 30, chapter 2, section 51, Code of Alabama 1975 (formerly Title 34, section 31) unconstitutional.

[7,8] The husband's basis for this argument is the fact that Title 30, chapter 2, section 51 permits a wife to receive alimony in a divorce case but does not make similar provisions for a husband (regardless of his financial, mental or physical condition at the time of the divorce). The husband raised the issue of the constitutionality of the statute for the first time in his motion for new trial. And this court will not consider an issue as to the constitutionality of a statute where such issue is raised for the first time in a motion for new trial. Dale v. Dale, 54 Ala.App. 505,

310 So.2d 225 (1975). Nonetheless in both Orr v. Orr, Ala.Civ. App., 351 So.2d 904, cert. den. Ala., 351 So.2d 906 (1977), and Blackwell v. Blackwell, Ala.Civ.App. 348 So.2d 500 (1977), we refused to declare the Alabama alimony statute unconstitutional.

[9] The final issue raised on appeal concerns whether General Motors was a proper party to the divorce proceedings. General Motors became a party to this action at the motion of the wife. Her motion seeking to make General Motors a party to the divorce proceeding was based on the fact that the husband's automobile dealership agreement with General Motors prohibited the transfer of ownership of any stock of Ray Hughes Chevrolet, Inc. without the knowledge and consent of General Motors. Since the wife's petition for divorce requested that the trial court award her a share in her husband's dealership, she moved to have General Motors made a party to her suit. And we do not believe that the court committed reversible error by ordering that General Motors be joined under the Alabama Rules of Civil Procedure. See Rule 19, ARCP (permitting the joinder of persons needed for a just adjudication).

[10] Nevertheless, the husband did not complain of the court's action in this matter in his pleadings or at any time prior to this appeal. His objection to the joinder of General Motors should have been made before the close of the trial; however, no such objection was proferred and thus the husband did not raise this issue in a timely manner. We have often stated that a party may not raise for the first time on appeal new matter which was not presented by that party to the trial court or upon which the trial court had no opportunity to rule. Rule 4, ARAP, and committee comments thereto. Consequently, the husband's failure to object to the joinder of a party before the close of the proceedings constituted a waiver of his right to object to the trial court's action on the matter.

[11] Moreover, since only General Motors objected to the court's order requiring that General Motors be made a party to the wife's suit, General Motors is the proper party to appeal the court's ruling on its objection. However, General Motors didnot appeal and the husband has no standing to exercise this right on behalf of General Motors.

Having considered the husband's arguments, we find no reversible error and thereby affirm the trial court's award of alimony and child support to the wife.

[12] The wife has requested that this court order that her husband pay a reasonable attorney's fee to her lawyer for his efforts in preparing her defense on this appeal. We consider $500 to be a just and reasonable fee for the services performed on the wife's behalf. Accordingly, we hereby award the sum of $500 to the wife as a reasonable attorney's fee.

ATTORNEY'S FEE AWARDED.

AFFIRMED.

WRIGHT, P. J., and HOLMES, J., concur.

On Rehearing

[13] Prior to appellant-husband's application for rehearing the appellee-wife filed a motion to amend the judgment entered by this court to include the ten percent award of damages as required by Title 12, chapter 22, section 72, Code of Alabama 1975. Apparently this action was taken as the result of a misapprehension on the part of appellee's attorney.

Seemingly he thought that the opinion rendered by this court in regard to this matter constituted a final judgment. However, we should point out to the bar of this state that a judgment on an appeal is not entered until we have ruled on an application for rehearing, or the time for filing such an application has expired.

[14] Since the ten percent penalty will be awarded in this case, we believe the contentions asserted by the parties concerning its applicability should be discussed. Attorney for appellee sought an award of the penalty on the ground that this court had affirmed the trial court's judgment for alimony in gross and attorney's fees. The lawyer who represented appellant challenged appellee's motion by contending that the statutory penalty of ten percent was not applicable in divorce cases. Phillips v. Phillips, 221 Ala.455, 129 So.3 (1930). Appellant also maintained that it was improper to impose the ten percent penalty on the award of attorney's fees. Dent v. Foy, 210 Ala. 160, 97 So. 627 (1923). However, we do not believe either case cited by appellant supports his arguments in regard to this matter.

Phillips v. Phillips involved a substantial change by the supreme court of the amount of alimony and attorney's fees which had been awarded by the trial court. It is well established that an appellee is not entitled to the ten percent penalty when the amount of judgment is reduced by the appellate court. Chapman v. Rivers Construction Co., 284 Ala. 633, 227 So.2d 403 (1969).

On the other hand, Dent v. Foy dealt with the denial of the ten percent penalty on the attorney's fees which had been awarded in the case. But the issue litigated in Dent v. Foy

was whether plaintiff's counsel was entitled to attorney's fees paid out of a common fund which resulted from the partition and sale of the parties' jointly owned property. Consequently, the supreme court concluded that no penalty should be awarded because the allowance for the attorney's fee was not "a decree rendered for money" under the statutory predecessor to section 72. The court reasoned that the attorney's fees awarded were merely an allowance of a fee payable out of trust funds and as such did not constitute "a decree rendered for money." Moreover, we should also note that due to the nature of that case the cost of appeal was divided equally between the parties. The situation in Dent v. Foy is significantly different from that before us in this instance. The decision in Dent v. Foy rejected the applicability of the ten percent penalty because both parties were entitled to share in the common fund although a question arose as to whether a portion of the fund could be used to pay one party's attorney. Since the parties shared in the cost of the suit as well as the funds which resulted from the partition, it would have been inequitable to penalize one party merely because he sought to determine how a portion of the common proceeds could be spent.

Rule 8(a) ARAP permits a stay of execution on a judgment pending appeal provided a supersedeas bond is executed by the appealing party. And this rule is applicable to situations where a judgment is for the payment of money or for the performance of some other act or duty as well as situations where the judgment is only for the performance of some act or duty. In the present case appellant filed an application for supersedeas bond and he had a right to do so since separate provisions of the trial court's decree had ordered him to pay money (alimony and attorney's fees) and

had required him to perform various acts (the maintenance of insurance, etc.). Indeed, Ryan v. Ryan, 267 Ala. 677, 104 So.2d 700 (1958), recognized that in order for the husband to stay the trial court's award of alimony (i.e. that amount in excess of the pendente lite support provided for the wife while an appeal was being taken), the filing of a supersedeas bond was necessary. Moreover, the opinion in Ryan v. Ryan noted that once the husband undertook to stay the judgment of the trial court by means of a supersedeas bond, he subjected himself to all the consequences relevant to the use of the bond. Among these consequences were: "bond with security, with penalty and conditions adapted to the character of the decree." (Emphasis supplied.)

The rationale used in Ryan v. Ryan is clearly applicable in this case. If an appellant chooses to use a supersedeas bond he must subject himself to its "detriments" as well as its benefits. One such detriment is the possibility that the ten percent penalty will be awarded if he is unsuccessful on appeal after having executed a supersedeas bond. We see no distinction between this type of case and any other type of civil action. Consequently, we hold that the ten percent penalty provided for in section 72 is applicable to appeals from judgments entered in divorce cases. And the penalty may be applied to the amount superseded even though a portion of that amount may include an award of attorney's fees.

APPLICATION FOR REHEARING OVERRULED.

WRIGHT, P.J., and HOLMES, J., concur.

APPENDIX B

Ex parte Raymond HUGHES.

77-440.

Supreme Court of Alabama.

Sept. 22, 1978.

Certiorari to the Court of Civil Appeals, 362 So.2d 910.

PER CURIAM.

WRIT QUASHED AS IMPROVIDENTLY GRANTED.

BLOODWORTH, MADDOX, JONES, SHORES, EMBRY and BEATTY, JJ., concur.

TORBERT, C. J., and FAULKNER and ALMON, JJ., dissent.

APPENDIX C

KN2

Raymond HUGHES, appellant, v. Madge J. HUGHES.
No. 78-1071.

Appeal from the Supreme Court of Alabama.

Facts and opinion, Ex parte Hughes, 362 So.2d 918.

April 16, 1979. Judgment vacated and case remanded to the Supreme Court of Alabama for further consideration in light of Orr v. Orr, 440 U.S. _____, 99 S.Ct. 1102, 59 L.Ed.2d 306 (1979).

Mr. Justice POWELL took no part in the consideration or decision of this case.

APPENDIX D

In re Raymond HUGHES

v.

Madge J. HUGHES.

Ex Parte Raymond HUGHES, Petitioner.

77-440.

Supreme Court of Alabama.

June 8, 1979.

After remand by the Supreme Court of the United States, _____ U.S. _____, 99 S. Ct. 1986, 60 L.Ed.2d 370, CAUSE REMANDED to the Court of Civil Appeals for further consideration in the light of Orr v. Orr, 440 U.S. _____, 99 S.Ct. 1102, 59 L.Ed.2d 306.

PER CURIAM.

All the Justices concur, except MADDOX and SHORES, JJ., not sitting.

Prior opinions, Ala. Civ. App., 362 So.2d 910, 918.

On remand, Ala. Civ. App., 372 So.2d 845.

APPENDIX E

Raymond HUGHES

v.

Madge J. HUGHES.

Civ. 1204.

Court of Civil Appeals of Alabama.

June 27, 1979.

Rehearing Denied Aug. 8, 1979.

In divorce proceeding, the Circuit Court, Coffee County, Riley Green, J., granted divorce and ordered husband to pay alimony, and husband appealed. After initial affirmance, 362 So.2d 910, and after writ of certiorari was quashed by the Alabama Supreme Court, 362 So.2d 918, the United States Supreme Court vacated and remanded for further consideration, _____ U.S. _____, 99 S.Ct. 1986, 60 L.Ed.2d 370, and the Alabama Supreme Court, in response to the mandate, remanded to the Court of Civil Appeals for reconsideration, 372 So.2d 845. The Court of Civil Appeals, Bradley, J., held that in light of extension of benefits of alimony statute equally to men and women, thereby removing equal protection infirmity, decision of trial court ordering husband, and not wife, to pay alimony, would be affirmed, particularly in view of fact that husband did not request award of alimony nor did he demonstrate a need for alimony, whereas the wife demonstrated her need for alimony and husband's ability to respond to that need.

Affirmed.

Divorce KN287

In light of extension of benefits of alimony

statute equally to men and women, thereby removing equal protection infirmity, decision of trial court ordering husband, and not wife, to pay alimony, would be affirmed, particularly in view of fact that husband did not request award of alimony nor did he demonstrate a need for alimony, whereas the wife demonstrated her need for alimony and husband's ability to respond to that need.

BRADLEY, Judge.

The above styled cause was remanded to this court by the Alabama Supreme Court in response to the mandate of the United States Supreme Court for reconsideration in light of Orr v. Orr, 440 U.S. _____, 99 S.Ct. 1102, 59 L.Ed.2d. 306 (1979).

In the Orr case the United States Supreme Court held the Alabama alimony statutes unconstitutional for the reason that they denied the husband equal protection of the law. Subsequently this court rendered a decision, i.e. Orr v. Orr, _____ So.2d _____, Civ. 1006 (Ala. Civ. App., May 30, 1979), extending the benefits of the alimony statutes equally to men as to women, thereby removing the equal protection infirmity. Thus the Alabama alimony statutes are now constitutional insofar as they do not violate the Equal Protection Clause of the fourteenth amendment to the United States Constitution.

Therefore we conclude that the decision of the trial court should be affirmed, particularly in view of the fact that the husband did not request an award of alimony, nor did he demonstrate a need for alimony; whereas the wife amply demonstrated her need for alimony and the husband's ability to respond to that need.

After a careful reconsideration of the case in light of the directive from the Alabama Supreme Court, we affirm the judgment of the trial court.

AFFIRMED.

WRIGHT, P. J., and HOLMES, J., concur.

APPENDIX F

Ex parte Raymond HUGHES.

(In re Raymond Hughes

v.

Madge J. Hughes).

78-818.

Supreme Court of Alabama.

Sept. 28, 1979.

Certiorari to the Court of Civil Appeals.

Richard H. Gill, Montgomery, for petitioner.

No brief for respondent.

PER CURIAM.

WRIT DENIED. (Ala. Civ. App., 372 So.2d 845).

TORBERT, C. J., and BLOODWORTH, MADDOX, FAULKNER, JONES and SHORES, JJ., concur.

ALMON, EMBRY and BEATTY, JJ., dissent, having expressed their views in Ex parte Gartman, (MS. August 17, 1979, No. 78-245), _____ So.2d _____.

APPENDIX G

IN THE COURT OF CIVIL APPEALS
OF THE STATE OF ALABAMA

RAYMOND J. HUGHES,	)
	)
Appellant,	)
	)
v.	)
	)
MADGE J. HUGHES,	)
	)
Appellee.	)

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Raymond J. Hughes the Appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Alabama, denying the petition for Write of Certiorari to the Court of Civil Appeals for the State of Alabama, entered in this action on September 28, 1979.

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

/s/ Richard H. Gill
Richard H. Gill
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on Mr. Joe S. Pittman, 304 S. Edwards Street, Enterprise, Alabama 36330, by mailing same United States mail, postage prepaid

and properly addressed this the 27th day of December, 1979.

/s/ Richard H. Gill
Richard H. Gill

APPENDIX H

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution, Article III, Section 2, providing part:

> The judical Power shall extend to all Cases, in Law and Equity, arising under this Constitution, [and] the Laws of the United States...
>
> ...In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The United States Constitution, Article VI, providing in part:

> This Constitution, and the laws of the United States which shall be made in Pursuance thereof;...shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The United States Constitution, Amendment XIV, Section 1, providing in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 USC Section 1257:

> Final judgments or decrees rendered by the

highest court of a State in which a decision could be had, may be reviewed by the Supreme Court, as follows:...

***

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity.

28 USC, Section 2104:

An appeal to the Supreme Court from a State court...shall have the same effect, as if the judgment or decree appealed from had been rendered in a court of the United States.

28 USC, Section 2106:

The Supreme Court...may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

Alabama Code 1975, Sections 30-2-51 through 30-2-53:

Section 30-2-51:

If the wife has no separate estate or if it be insufficient for her maintenance, the judge, upon granting a divorce, at his discretion, may order to the wife an allowance out of the estate of the husband, taking into consideration the value thereof and the condition of the family.

Section 30-2-52:

If the divorce is in favor of the wife for the misconduct of the husband, the judge trying the case shall have the right to make an allowance to the wife out of the husband's estate, or not make her an allowance as the circumstances of the case may justify, and if an allowance is made, it must be as liberal as the estate of the husband will permit, regard being had to the condition of his family and to all the circumstances of the case.

Section 30-2-53:

If the divorce is in favor of the husband for the misconduct of the wife and if the judge in his discretion deems the wife entitled to an allowance, the allowance must be regulated by the ability of the husband and the nature of the misconduct of the wife.